1851

SUPREME COURT OF THE UNITED STATES.

No. 200.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

THOMAS G. MORGAN ET AL.

IN ERROR TO THE CIRCUIT COURT, U. S., FOR THE DISTRICT OF LOUISIANA.

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J. & G. S. Gideon, printers

Copy of agreements.

It is agreed that defendants have been in possession since the issuance of the certificate of confirmation, and that the signatures to the deeds exhibited, with their answers, are genuine; and that the translations submitted are correct, and all depositions filed may be read.

H. S. EUSTIS,
For defendants.
G. WINCHESTER,
For complainants.

Nov. 15th, 1847.

And afterwards, to wit, on the 1st day of November, A. D. 1847, this cause was set for hearing by the complainants by the solicitor on the bill, answers, exhibit and proof.

And afterwards, to wit, at the November term of the court first aforesaid, to wit, on the 15th day of November, A. D. 1847, until which time this cause was legally continued, came the complainants, by their solicitor aforesaid, and thereupon this cause was discontinued as to the heirs of Job Routh; and it appearing to the satisfaction of the court, by the suggestion of the complainants, by their solicitor aforesaid, that since the institution of this suit the defendants, Austin Williams, Archibald Williams, and Elias Ogden, have departed this life, it is ordered by the court that this suit be abated as to them.

And thereupon this cause being fully argued by counsel, it was submitted to the court for its decision thereon.

And afterwards, to wit, at the November term of the court first aforesaid, to wit, on the seventeenth day of November, in the year of our Lord one thousand eight hundred and forty-seven, this cause came on to be heard at this term, and was argued by counsel; and upon consideration thereof, it was ordered, adjudged, and decreed that the said bill of complaint be dismissed at the costs of the complainants, to be taxed.

(Signed) S. J. GHOLSON.

From which decision the complainants pray an appeal to the Supreme Court of the United States, which is granted, upon their filing bond within ninety days, in the sum of three hundred dollars, conditioned according to law, &c.

(*Copy of Appeal bond.*)

UNITED STATES OF AMERICA,
Southern district of Mississippi, set:

Know all men by these presents, that we, Merritt M. Robinson and Marguerite, his wife, Aurore Gayoso, Fernando Gayoso, and Felicite Gayoso, and Edward Englehard, and Richard R. Randolph, are held and firmly bound unto William J. Minor, James C. Wilkins and Henry Chotard, executors of the last will and testament of Katharine Minor,

deceased, and to Frances Chotard, Katharine L. Wilkins, and said William J. Minor, in the just and full sum of three hundred dollars, lawful money of the United States, to be paid to the said William J. Minor, James C. Wilkins, and Henry Chotard, executors as aforesaid, and to Frances Chotard, Katharine L. Wilkins, and William J. Minor, their lawful attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 17th day of January, one thousand eight hundred and forty-eight.

The condition of this obligation is such, that whereas at a term of the circuit court of the United States, in and for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of November, A. D. 1847, a final decree was rendered by said court, sitting in chancery, in favor of the said William J. Minor, James C. Wilkins, and Henry Chotard, executors as aforesaid, and Frances Chotard, Katharine L. Wilkins, and William J. Minor, against the said Merritt M. Robinson and Marguerite, his wife, Aurore Gayoso, Fernando Gayoso, and Felicite Gayoso. And whereas the said Merritt M. Robinson and Marguerite, his wife, Aurore Gayoso, Fernando Gayoso, and Felicite Gayoso, have prayed for and obtained an appeal therefrom to the Supreme Court of the United States, which is granted, upon their executing this bond according to law, with the above named Edward Englehard and Richard R. Randolph as their securities therein. Now, if the said Merritt M. Robinson and Marguerite, his wife, Aurore Gayoso, Fernando Gayoso, and Felicite Gayoso, shall prosecute their said appeal with effect, and shall well and truly pay and satisfy the amount of all such costs as the Supreme Court of the United States shall adjudge in the premises, if the said Merritt M. Robinson and Marguerite, his wife, Aurore Gayoso, Fernando Gayoso, and Felicite Gayoso, shall fail to make their plea good, then and in that case this obligation to be void, otherwise to remain in full force and virtue.

M. M. ROBINSON, [SEAL.]
MARGARET ROBINSON, [SEAL.]

Aurore Gayoso, Fernando Gayoso, Felicite Gayoso, by their mother and tutrix,

LODOISKA GAYOSO, [SEAL.]
EDWARD ENGELHARD, [SEAL.]
R. R. RANDOLPH. [SEAL.]

Witness to signature of E. Engelhard—
W. H. BROWN.

Witness to signatures of M. M. Robinson, M. Robinson, and L. Gayoso, tutrix—
P. A. IRICON.

I approve of the foregoing bond and securities.
Given under my hand this 10th day of February, A. D. 1848.

S. J. GHOLSON,
Judge U. S. D. C. for Mississippi.

UNITED STATES CIRCUIT COURT,
In and for the fifth circuit and district of Louisiana.

THE UNITED STATES
vs.
T. G. MORGAN. } No. 1168.

Pleas and proceedings before the honorable Theodore H. McCaleb, district judge of the United States in and for the district of Louisiana, and one of the judges of the circuit court of the United States in and for the fifth circuit and district of Louisiana, at a circuit court of the United States, in and for the fifth circuit and district aforesaid, begun and held at the city of New Orleans, in the district aforesaid, on the twentieth day of December, being the third Monday of December, in the year of our Lord one thousand eight hundred and forty-seven.

Be it remembered, that heretofore, to wit, on the *the* fifteenth day of December, in the year of our Lord one thousand eight hundred and forty-three, came the United States, by their attorney, Bailie Peyton, esq., into the clerk's office of the said court, and filed the following petition, which is in the words and figures following, to wit:

To the honorable the circuit court of the United States, for the fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, the petition of the United States of America, by Balie Peyton, their attorney for said district, respectfully shews:

That Thomas Gibbes Morgan, Thomas W. Chinn, Micajah Courtney, Josiah Barker, and John Davenport, residing within the jurisdiction of this honorable court, are indebted, jointly and severally, to these petitioners in the sum of one hundred and twenty thousand dollars, with interest thereon, at the rate of six per centum per annum, from 14th December, 1841, for this, that heretofore, to wit, on the 14th day of December, in the year of our Lord one thousand eight hundred and forty-one, the said Thomas Gibbes Morgan, Thomas W. Chinn, Micajah Courtney, Josiah Barker, and John Davenport, by their certain bond or writing obligatory, signed with their names and sealed with their seals, acknowledged themselves to be held and firmly bound unto the said United States of America in the said sum of one hundred and twenty thousand dollars, for payment whereof, they, the said Thomas Gibbes Morgan, Thomas W. Chinn, Micajah Courtney, Josiah Barker, and John Davenport bound themselves, their heirs, executors, and administrators, jointly and severally; which said bond or writing obligatory was and is subject to a certain condition thereunder written, to the effect following, that is to say, that whereas the President of the United States hath pursuant to law appointed the said Thomas Gibbes Morgan collector of the customs for the district of Mississippi, in the State of Louisiana, by commission bearing date the 25th day of June, 1841;

now, therefore, if the said Thomas Gibbes Morgan has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of the said office according to law, then the said obligation to be void and of none effect, otherwise it shall abide and remain in full force and virtue.

All which will more fully appear by reference to said bond or writing obligatory, a duly certified copy of which is annexed to, and prayed to be made a part of, this petition, the original thereof being on file in the Treasury Department at Washington city.

Now these petitioners, by their attorney aforesaid, aver and expressly charge that the condition of said bond or writing obligatory has been broken in this, to wit, that the said Thomas Gibbes Morgan had not truly and faithfully executed and discharged, nor did said Thomas Gibbes Morgan continue truly and faithfully to execute and discharge, all the duties of the said office according to law. That the said Thomas Gibbes Morgan did, both before and after the time of the signing of said bond, and while he was collector as aforesaid, receive as said collector large sums of money belonging to petitioners, which he has in part only paid to petitioners, leaving the balance of two hundred and seventy-four thousand seven hundred and seventy-five dollars and seventeen cents, which was received by said Morgan as said collector, and while he was said collector, and which said balance said Morgan has refused to pay to petitioners, and yet retains the same in his possession though often directed and requested by petitioners to pay the same to them. That said Morgan has not, since the first quarter of the year 1843, transmitted the returns of his accounts as said collector for settlement to the proper officer, and is required by law to do, and for that reason petitioners are unabled to specify the items of said balance, but they reserve the right, by amended petition or otherwise, of furnishing a detailed statement of said Morgan's account as said collector so soon as he shall transmit his quarterly returns as aforesaid; by means whereof a right of action has accrued to these petitioners to have and recover the penalty of said bond or writing obligatory, which though amicably requested said obligors refuse to pay.

That said petitioners also reserve the right of proceeding, by amended petition or otherwise, against the said Thomas Gibbes Morgan for any other or greater sum than the penalty of said bond herein sued for, even should the same exceed the said balance of $\$274,775\frac{17}{100}$ *dollars*, inasmuch as, from the omission and neglect of said Morgan to furnish said quarterly returns, petitioners are unable to finally adjust the accounts of said Morgan as said collector.

Petitioners pray that said Thomas Gibbes Morgan, Thomas W. Chinn, Micajah Courtney, Josiah Barker, and John Davenport be cited to appear and answer this petition; and that, after due proceedings, they be condemned by a judgment of this honorable court, jointly and severally, to pay to these petitioners the said sum of one hundred and twenty thousand dollars, with interest thereon at the rate of six per centum per annum, from the 14th day of December, eighteen hundred and forty-

one until final payment, and for costs of suit; and that these petitioners have general relief in the premises.

BALIE PEYTON,
United States attorney for the eastern district of Louisiana.

I hereby accept service of the within petition, and waive service of citation, reserving the legal delay for answering.

THOMAS GIBBES MORGAN.

New Orleans, December 14th, 1843.

Bond annexed to petition.

Know all men by these present, that we, Thomas Gibbes Morgan, Thomas W. Chinn, Micajah Courtney, Josiah Barker, and John Davenport, are held and firmly bound unto the United States of America, in the full and just sum of one hundred and twenty thousand dollars, money of the United States; to which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this fourteenth day of December, in the year one thousand eight hundred and forty-one.

The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said Thomas Gibbes Morgan collector of the customs for the district of Mississippi, in the State of Louisiana, by commission bearing date the 25th day of June, 1841:

Now, therefore, if the said Thomas Gibbes Morgan has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of the said office, according to law, then the above obligation to be void and of none effect, otherwise it shall abide and remain in full force and virtue.

THOMAS GIBBES MORGAN, [SEAL.]
THOMAS W. CHINN, [SEAL.]
MICAJAH COURTNEY, [SEAL.]
JOSIAH BARKER, [SEAL.]
JOHN DAVENPORT. [SEAL.]

Signed, sealed, and delivered in presence of—
MORRIS MORGAN,
JOHN W. CURLEY.

Note. The names to be written and signed in full; seals to be affixed with wax or wafer; signatures to be witnessed by two witnesses, and the bond to be dated on the day it is executed.

The sufficiency of the sureties to be certified by the United States district judge or attorney.

I, Thomas Gibbes Morgan, having been appointed collector of the customs for the district of Mississippi, in the State of Louisiana, do solemnly, sincerely, and truly swear, that I will diligently and faithfully execute the duties of said office of collector of the customs for the district of Mississippi, in the State of Louisiana, and will use the best of my

endeavors to prevent and detect frauds, in relation to the duties imposed by the laws of the United States. I further swear that I will support the Constitution of the United States.

THOMAS GIBBES MORGAN.

Sworn to and subscribed, this twenty-first day of December, A. D. 1841, before me. THEO. H. McCALEB,
U. S. Judge.

TREASURY DEPARTMENT,
Comptroller's Office.

Admitted and certified this 3d day of January, 1842.
J. N. BARKER,
Ac. Comptroller.

TREASURY DEPARTMENT,
REGISTER'S OFFICE, *2d December*, 1843.

Pursuant to the act of Congress of March 3d, 1797, entitled "an act to provide more effectually for the settlement of accounts between the United States and receivers of public money," I, Thomas L. Smith, register of the Treasury Department, do hereby certify, that the annexed bond is a true copy of the original on file in said department.
T. L. SMITH, *Register.*

Be it remembered, that Thomas L. Smith, who certified the annexed transcript, is now, and was at the time of doing so, register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, J. C. Spencer, Secretary of the Treasury of the United States, have hereunto subscribed my name, and [SEAL.] caused to be affixed the seal of this department, at the city of Washington, this second day of December, in the year of our Lord 1843. J. C. SPENCER,
Secretary of the Treasury.

And afterwards, to wit, on the 30th day of December, 1843, the following answer of Josiah Barker was filed in the clerk's office:

United States circuit court for the fifth circuit.

The UNITED STATES
vs.
T. G. MORGAN and others.

The defendant, Josiah Barker, comes into court by his counsel, Jacob Barker, in the above entitled suit, in answer to the petition of the plaintiff, and denied all and singular the several allegations in plaintiff's petition contained, with the exception that he admits that he signed the security bond therein referred to; and insists on full legal proof of all the other allegations.

He specially denies that the defendant Morgan had not forwarded his accounts according to the requirements of law, and insists that he is not a defaulter to the plaintiff in the sum mentioned, or in any other sum;

that he has read in the annual report to Congress by the Secretary of the Treasury, among other things, the following sentence:

"It affords great pleasure to state there has been no delinquency or default on the part of collectors of the customs, the receivers of public moneys, or any other officer or agent charged with the receipt or deposit of the public funds."

Therefore this defendant prays to be dismissed with costs, and as in duty bound will ever pray.

JACOB BARKER,
Counsel for Josiah Barker.

And afterwards, to wit, on the 17th day of February, 1845, the following answer of T. G. Morgan was filed in the clerk's office:

The UNITED STATES
vs.
T. G. MORGAN.

To the honorable the circuit court of the United States for the fifth judicial circuit, holding sessions in and for the eastern district of Louisiana.

Thomas Gibbes Morgan, one of the defendants in the above entitled case, reserving to himself the right to amend or alter this his answer when the plaintiffs shall have filed their account, for answer to the said petition saith, that he specially denies that he has ever retained any sum or sums of money whatsoever, to which the plaintiff is or was entitled, or that he has ever failed, neglected, or refused to pay any sum or sums of money to the United States to which they were legally entitled, or which was demanded of him by any competent authority; he avers, on the contrary, that he has promptly paid every legal demand made on him. He expressly denies that he has ever failed, neglected, or refused to render all such accounts as he was bound to do by law, and avers that if there has been any delay in the rendition of his accounts it has been caused by the neglect and improper and illegal acts of the officers of the Government of the United States, over whom this respondent can exercise no control. He further says, that he admits his signature to the bond, a copy of which is annexed to the plaintiffs' petition, and denies all and singular the other allegations therein contained, and will require strict proof thereof on trial. Wherefore he prays to be hence dismissed with his costs, and for general relief and trial by jury.

THOMAS GIBBES MORGAN.

And on the same day the following answer of Chinn, Courtney & Davenport was filed in the clerk's office:

The UNITED STATES
vs.
T. G. MORGAN et al.

To the honorable the circuit court of the United States, for the fifth judicial circuit, holding sessions in and for the eastern district of Louisiana.

Thomas W. Chinn, Micajah Courtney, and John Davenport, defend

ants in the above entitled case, reserving to themselves the right to amend or alter this their answer, when the plaintiff shall have filed an account, for answer to the said petition say, that they admit their signatures to the bond, a copy of which is annexed to the plaintiff's petition, but specially deny each and every other allegation in the said petition contained, and will require strict proof thereof on trial. Wherefore, they pray they may be hence dismissed with their costs, and pray for general relief in the premises, and for trial by jury.

THOMAS GIBBES MORGAN,
Att'y for respondents.

And afterwards, to wit, on the 27th day of January, 1848, at the December term of 1847, the following entry on the minutes was made of record:

UNITED STATES
vs. } 1168.
T. G. MORGAN et al.

The trial of this case being assigned for this day, appeared the respective parties by their counsel, when the following jury were empannelled and sworn to try the issue joined between the parties, to wit, T. B. Blanchard, J. Castellano, A. Delpit, Wm. Armstrong, Henry Kerrison, H. N. Lund, Henry Téte, C. Stevenson, Jacob Stein, F. Levaiseur, Daniel Dana, and Charles N. Noble. Whereupon, said case was opened to the jury by the district attorney, and the evidence on the part of the plaintiffs being closed, the evidence on the part of the defence being opened, it proceeded until 3 o'clock, P. M. It was therefore considered by the court, that this cause be and the same is hereby continued until to-morrow, the 28th January, 1848, at 10 o'clock, A. M., and that the jury be discharged until that hour.

And afterwards, to wit, on the 28th day of January, 1848, at the said December term, the following entry was made of record:

UNITED STATES
vs. } 1168.
T. G. MORGAN et als.

The trial of this case being resumed this day, the court and the jury heretofore sworn, the evidence on the part of the defence proceeded until 3 o'clock, P. M. Whereupon it was considered by the court, that the further trial of this case be and the same is hereby continued until to-morrow, the 29th instant, at 10 o'clock, A. M., and that the jury be discharged until that hour.

And afterwards, to wit, on the 29th day of January, 1848, at the said December term, the following entry was made of record:

UNITED STATES
vs. } 1168.
T. G. MORGAN et al.

The trial of this case being resumed this day, the evidence on the part of the defendants closed, and the argument of said case was open-

ed before the court and the jury heretofore sworn to try the issue joined between the parties, the respective parties appearing by their counsel; and said argument having concluded, said cause was submitted to the jury; the court having charged said jury on the law, and appointed J. Castellano the foreman, the said jury retired to deliberate upon their verdict.

And further on the same day, the following entry was made of record:

UNITED STATES vs. T. G. MORGAN et al. } 1168.

T. B. Blanchard, J. Castellano, A. Delpit, Wm. Armstrong, Henry Kerrison, H. N. Lund, Henry Téte, C. Stevenson, Jacob Stein, F. Levaiseur, Daniel Dana, and Chs. N. Noble, the jury empannelled and sworn to try the issue joined between the parties on the law and the evidence, having retired under charge of the court to deliberate upon their verdict, returned into court with the following, to wit:

"Verdict in favor of the United States, viz:

"For the balance acknowledged, - - - - -	$32,400 13
"And commissions, - - - - - - - -	28,169 44
"Amounting - - - -	$60,569 57

"New Orleans, January 29th, 1848.

JOHN CASTELLANO, *Foreman.*"

Whereupon, it was considered by the court that said verdict be and the same is hereby recorded.

And afterwards, to wit, on the 9th day of February, 1848, at the said December [term,] the following judgment was rendered:

UNITED STATES vs. T. G. MORGAN et als. } 1168.

In this case, the court considering the verdict of the jury heretofore recorded herein, and being satisfied therewith, it is ordered, adjudged, and decreed, that there be final judgment rendered in favor of the United States and against the defendants, Thomas Gibbes Morgan, Thomas W. Chinn, Micajah Courtney, Josiah Barker, and the heirs and legal representatives of John Davenport, deceased, to wit, Charles Davenport, administrator of the estate of the deceased, Elizabeth Davenport, widow of Celestin Maxent, Margaret Ellis and Peter McKitterick, her husband, Erasmus A. Ellis and John Philip Edgar Davenport, a minor, son of the deceased, represented by V. Gourdan, in solido, for the sum of sixty thousand five hundred and sixty-nine dollars and fifty-seven cents, with interest thereon from the date of said verdict, to wit, twenty-ninth day of January, A. D. eighteen hundred and forty-eight, until final

payment, at the rate of six per cent. per annum, and costs of suit, to be taxed.

Judgment rendered 9th February, 1848. Signed 14th March, 1848.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

And afterwards, to wit, on the 4th day of February, 1848, the following bill of exceptions was filed by the United States district attorney:

THE UNITED STATES
vs.
THOMAS GIBBES MORGAN and others.

In the United States circuit court in and for the fifth circuit and district of Louisiana.

Be it remembered, that, at the December term of said court, on the trial of the above named case, on this Saturday, the 29th day of January, in the year 1848, after the argument on both sides had been closed, and before the jury had retired, the attorney of the United States for the district aforesaid prayed the court to charge the jury as follows, to wit:

First. That T. G. Morgan, and the sureties on his official bond, were liable in law for the sum of $99,915 27, an amount of Treasury notes received by T. G. Morgan, collector, in payment of public dues, and lost by him, or stolen from him while in his possession, after they had been marked "cancelled," and before they were deposited in the post office; for which purpose they had been put up in a bundle.

And, on the day and date aforesaid, the attorney of the United States aforesaid, further prayed the court to charge the jury—

Second. That the defendant, T. G. Morgan, and the sureties on his official bond, were liable in law for the sum of one thousand and seventy-four dollars and eighty-nine cents, being the amount of two Treasury notes of five hundred dollars each, and the interest thereon; which notes were received in payment of public dues by T. G. Morgan, collector, stolen from his office, altered, and afterwards again received by him.

The court refused to give the above charges as required, but charged the jury that, if they believed, from the evidence before them, that the Treasury notes in controversy were received by the defendant in payment of revenue, and that he took receipt upon the back of them when received from the persons paying them in, and cancelled them on the face of each according to law, and had them put into a bundle in the usual manner for transmitting them to the Treasury Department, and gave orders to the person who had been in the habit of delivering them at the post office to deposit them there for transmission, and they were lost or purloined without the knowledge or consent of defendant, he is not answerable to the plaintiff for them. And the court further charged the jury, that if they believed from the evidence that the two Treasury notes, amounting to one thousand and seventy-four dollars and eighty-nine cents, were part of the Treasury notes so cancelled, and intended to have been forwarded to the Treasury Department, but had been subsequently so altered, without the knowledge or consent of the defend-

ed before the court and the jury heretofore sworn to try the issue joined between the parties, the respective parties appearing by their counsel; and said argument having concluded, said cause was submitted to the jury; the court having charged said jury on the law, and appointed J. Castellano the foreman, the said jury retired to deliberate upon their verdict.

And further on the same day, the following entry was made of record:

UNITED STATES vs. T. G. MORGAN et al. } 1168.

T. B. Blanchard, J. Castellano, A. Delpit, Wm. Armstrong, Henry Kerrison, H. N. Lund, Henry Téte, C. Stevenson, Jacob Stein, F. Levaiseur, Daniel Dana, and Chs. N. Noble, the jury empannelled and sworn to try the issue joined between the parties on the law and the evidence, having retired under charge of the court to deliberate upon their verdict, returned into court with the following, to wit:

"Verdict in favor of the United States, viz:

"For the balance acknowledged, - - - - -	$32,400 13
"And commissions, - - - - - - - - -	28,169 44
"Amounting - - -	$60,569 57

"New Orleans, January 29th, 1848.

JOHN CASTELLANO, *Foreman.*"

Whereupon, it was considered by the court that said verdict be and the same is hereby recorded.

And afterwards, to wit, on the 9th day of February, 1848, at the said December [term,] the following judgment was rendered:

UNITED STATES vs. T. G. MORGAN et als. } 1168.

In this case, the court considering the verdict of the jury heretofore recorded herein, and being satisfied therewith, it is ordered, adjudged, and decreed, that there be final judgment rendered in favor of the United States and against the defendants, Thomas Gibbes Morgan, Thomas W. Chinn, Micajah Courtney, Josiah Barker, and the heirs and legal representatives of John Davenport, deceased, to wit, Charles Davenport, administrator of the estate of the deceased, Elizabeth Davenport, widow of Celestin Maxent, Margaret Ellis and Peter McKitterick, her husband, Erasmus A. Ellis and John Philip Edgar Davenport, a minor, son of the deceased, represented by V. Gourdan, in solido, for the sum of sixty thousand five hundred and sixty-nine dollars and fifty-seven cents, with interest thereon from the date of said verdict, to wit, twenty-ninth day of January, A. D. eighteen hundred and forty-eight, until final

payment, at the rate of six per cent. per annum, and costs of suit, to be taxed.

Judgment rendered 9th February, 1848. Signed 14th March, 1848.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

And afterwards, to wit, on the 4th day of February, 1848, the following bill of exceptions was filed by the United States district attorney:

THE UNITED STATES
vs.
THOMAS GIBBES MORGAN and others.

In the United States circuit court in and for the fifth circuit and district of Louisiana.

Be it remembered, that, at the December term of said court, on the trial of the above named case, on this Saturday, the 29th day of January, in the year 1848, after the argument on both sides had been closed, and before the jury had retired, the attorney of the United States for the district aforesaid prayed the court to charge the jury as follows, to wit:

First. That T. G. Morgan, and the sureties on his official bond, were liable in law for the sum of $99,915 27, an amount of Treasury notes received by T. G. Morgan, collector, in payment of public dues, and lost by him, or stolen from him while in his possession, after they had been marked "cancelled," and before they were deposited in the post office; for which purpose they had been put up in a bundle.

And, on the day and date aforesaid, the attorney of the United States aforesaid, further prayed the court to charge the jury—

Second. That the defendant, T. G. Morgan, and the sureties on his official bond, were liable in law for the sum of one thousand and seventy-four dollars and eighty-nine cents, being the amount of two Treasury notes of five hundred dollars each, and the interest thereon; which notes were received in payment of public dues by T. G. Morgan, collector, stolen from his office, altered, and afterwards again received by him.

The court refused to give the above charges as required, but charged the jury that, if they believed, from the evidence before them, that the Treasury notes in controversy were received by the defendant in payment of revenue, and that he took receipt upon the back of them when received from the persons paying them in, and cancelled them on the face of each according to law, and had them put into a bundle in the usual manner for transmitting them to the Treasury Department, and gave orders to the person who had been in the habit of delivering them at the post office to deposit them there for transmission, and they were lost or purloined without the knowledge or consent of defendant, he is not answerable to the plaintiff for them. And the court further charged the jury, that if they believed from the evidence that the two Treasury notes, amounting to one thousand and seventy-four dollars and eighty-nine cents, were part of the Treasury notes so cancelled, and intended to have been forwarded to the Treasury Department, but had been subsequently so altered, without the knowledge or consent of the defend-

ant, so as to make them appear to be genuine, and afterwards received them in payment of duties believing them to be genuine, he is not responsible to the plaintiff for them, but is entitled to a credit on the account of the plaintiff for that amount.

Wherefore, the attorney of the United States aforesaid tenders this his bill of exceptions to the said refusal, and prays the same may be made a part of the record.

THEO. H. McCALEB, [L. S.]
U. S. judge.

And afterwards, to wit, on the 5th day of February, 1848, the following bill of exceptions, taken by the counsel of the defendants, was filed:

THE UNITED STATES
vs.
THOMAS GIBBES MORGAN and others.

In the United States circuit court, in and for the fifth circuit and district of Louisiana.

Be it remembered, that, at the December term of said court, on the trial of the above named case, on this Saturday, the 29th day of January, in the year 1848, after the defendants has introduced evidence to show that the item charged by the said T. G. Morgan in his account for the 2nd quarter of the year 1842, for safe-keeping and disbursement of public moneys from 12th July, 1846, to 26th July, 1843, being commission thereon, amounting to the sum of twenty-eight thousand one hundred and sixty-nine dollars and forty-four cents, $28,169 44, was reasonable and just under the circumstances, and which said item had been disallowed by the accounting officer of the Treasury Department; and after the argument on both sides had been closed, and before the jury had retired, the counsel for the defendants aforesaid requested and prayed the court to charge the jury as follows:

That the defendant, T. G. Morgan, when acting as collector of the customs, not being under the law a disbursing officer, and the payment of the drafts drawn on him by the Treasurer of the United States not being in the *court* of his duties as collector, he is entitled to a reasonable compensation for his risk and trouble in keeping and disbursing the money.

The court refused to give the above charge as required, but charged the jury that, under the law, the defendants were not entitled to the credit and compensation by them claimed as aforesaid.

Wherefore the defendants, by their counsel, tender this their bill of exceptions to the said refusal, and pray that the same may be made a part of the record.

THEO. H. McCALEB, [L. S.]
U. S. judge.

And afterwards, to wit, on the seventeenth day of April, 1848, at the said December term, the following motion and order were made of record:

1856

UNITED STATES
vs.
T. G. MORGAN et als.

On motion of T. J. Durant, esq., U. S. district attorney, it is ordered that a writ of error be granted herein, returnable to the Supreme Court of the United States on the first Monday of December, 1848.

Clerk's office, United States circuit court, fifth circuit and district of Louisiana.

I, Edmund Randolph, clerk of the circuit court of the United States, in and for the fifth circuit and district of Louisiana, do hereby certify, that the foregoing fourteen pages contain a full, faithful, and complete transcript of the record and proceedings had in the case of the United States vs. T. G. Morgan et als., on the law side of said court, and No. 1168 of the records of the court.

In testimony whereof I have hereunto signed my name, and affixed the seal of the said court, at the city of New Orleans, this first [L. S.] day of June, in the year of our Lord one thousand eight hundred and forty, and the seventy-second year of American independence.

ED. RANDOLPH, *Clerk.*
By J. Q. A. HOIT, *Dep. clerk.*

I, Theodore H. McCaleb, judge of the district court of the United States for the district of Louisiana, and one of the judges of the circuit court of the United States, fifth circuit and district of Louisiana, do hereby certify, that Edmund Randolph is the clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, and that J. Q. A. Hoit, who signed the foregoing certificate, is deputy clerk of the said circuit court, and was at the time of so doing, and that due faith and credit are due, and ought to be given, to his acts as such; and that the foregoing certificate is in due form of law.

Witness my hand and seal, this third day of June, A. D. 1848.

THEO. H. McCALEB. [L. S.]

Filed 4th December, 1848.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the United States of America and Thomas Gibbes Morgan, Thomas W. Chinn, Micajah Courtney, Josiah Barker, and the heirs and legal representatives of John Davenport, deceased, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said [SEAL.] Supreme Court of the United States, this seventeenth of April, in the year of our Lord one thousand eight hundred and forty-eight.

ED. RANDOLPH,
Clerk of the U. S. circuit court and district of Louisiana.

Citation in error.

The United States of America, to Thomas Gibbes Morgan, Josiah Barker, Thomas W. Chinn, Micajah Courtney, Charles Devenport, administrator and one of the heirs of John Devenport, deceased, Elizabeth Devenport, widow of Celestin Maxent, Peter McKetterick and Margaret Ellis, his wife, Erasmus A. Ellis, John Phillip Edgar Davenport, a minor, represented by V. Gourdan, all after the name of Courtney being the heirs of John Davenport, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, wherein the United States are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme [SEAL.] Court of the United States, this 12th day of October, in the year of our Lord one thousand eight hundred and forty-eight.

THEO. H. McCALEB, *U. S. Judge.*

Attest: E. RANDOLPH, *Clerk.*
By JAS. M. DOWNS, *D. C.*

Marshal's return.

Received October 13th, 1848, and on October 25th, 1848, served a copy of the within citation in error on Thomas Gibbs Morgan, one of the defendants, in person, at New Orleans; and on the 21st October, 1848, on V. Gourdan, tutor of John Phillip Edgar Davenport, a minor, one of the defendants, in person, at New Orleans; and on the same 21st

1857.

October, 1848, on Elizabeth Davenport, widow of Celestin Maxent, one of the defendants, in person, at Bouligny, parish of Jefferson, in this district, three and a half miles from New Orleans; and on the 31st of October, 1848, on Josiah Barker, one of the defendants, by handing the same to Jacob Barker, in person, his attorney of record, at New Orleans, the said Josiah Barker being absent from this district; and on the 26th October, 1848, on Thomas W. Chinn, one of the defendants, in person, at his domicil, in the parish of West Baton Rouge, in this district, one hundred and forty miles from New Orleans; and on the same 26th October, 1848, on Peter McKetterick and Margaret Ellis, his wife, who is one of the defendants in this case, by handing the same to the said Peter McKetterick, in person, at his domicil, in the town of Baton Rouge, in this district, one hundred and thirty miles from New Orleans; and on the same 26th October, 1848, on Micajah Courtney, one of the defendants, by handing the same to Charles Watts, esq., his attorney of record, in New Orleans, the said Micajah Courtney being absent from this district; and on the same 26th October, 1848, on Erasmus A. Ellis, one of the defendants, by handing the same to his wife, in person, at his domicil, in the parish of East Baton Rouge, in this district, he being then absent from his domicil, one hundred and fifteen miles from New Orleans; and on the same 26th October, 1848, on Charles Davenport, administrator, and one of the heirs of John Davenport, deceased, one of the defendants, in person, at his domicil, in the parish of East Baton Rouge, in this district, one hundred and fifteen miles from New Orleans; and to each of the above named defendants, at the time of service of the copy, I displayed the original citation and seal of the court affixed.

W. D. WAGNER,
U. S. Marshal.

Filed 4th December, 1848.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this seventeenth of April, in the year of our Lord one thousand eight hundred and forty-eight. [SEAL.]

ED. RANDOLPH,
Clerk of the U. S. circuit court and district of Louisiana.

Citation in error.

The United States of America, to Thomas Gibbes Morgan, Josiah Barker, Thomas W. Chinn, Micajah Courtney, Charles Devenport, administrator and one of the heirs of John Devenport, deceased, Elizabeth Devenport, widow of Celestin Maxent, Peter McKetterick and Margaret Ellis, his wife, Erasmus A. Ellis, John Phillip Edgar Davenport, a minor, represented by V. Gourdan, all after the name of Courtney being the heirs of John Davenport, deceased, greeting:

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Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 12th day of October, in the year of our Lord one thousand eight hundred and forty-eight. [SEAL.]

THEO. H. McCALEB, *U. S. Judge.*

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W. D. WAGNER,
U. S. Marshal.

Filed 4th December, 1848.